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Town of Milan

Local Law No. _ Of the year 2007

A local law creating Chapter 191 of the Code of the Town of Milan entitled
Freshwater Wetlands and Watercourse Protection

Be it enacted by the Town Board of the Town of Milan as follows:

SECTION 1. AMENDMENTS TO THE TOWN CODE

A new Chapter 191 is added as follows:

Chapter 191 Freshwater Wetlands and Watercourse Protection Law of the Town of Milan

§ 191-1 Title.

This chapter shall be known as the “Freshwater Wetlands and Watercourse Protection Law of the Town of Milan.”

§ 191-2 Purpose.

The purpose of this Law is to promote the health, safety and welfare of the residents of Milan and to implement the recommendations of the Town's adopted *Comprehensive Plan* by regulating the dredging, filling, deposition or removal of materials, the diversion or obstruction of water flow and the placement of structures in, and other uses of, the wetlands, watercourses and other waterbodies in the Town of Milan.

This Law is intended to preserve, protect and prevent the degradation of water quality to wetlands, watercourses and waterbodies through careful regulation and control so that the multiple functions and benefits they provide may continue, thereby helping to protect property from damages caused by flooding and other losses due to destruction of wetlands, waterbodies, watercourses, and associated buffers. This Law will also contribute to the overall protection of regional watersheds because portions of the headwaters of the Wappinger Creek, Roeliff Jansen Kill, Sawkill, Landsman Kill, Stony Creek, Little Wappinger Creek and the Crum Elbow Creek are located within the Town.

§ 191-3 Findings.

The Town Board of the Town of Milan finds and affirms the following:

- A. The Town Board has the authority to conserve and protect wetlands, watercourses and waterbodies under Subsections 10(1)(ii)(a)(11) and (12) of the New York State Municipal Home Rule Law.
- B. Federal, state, and local agencies as well as private researchers have increasingly understood and documented numerous values and beneficial services of wetlands, watercourses and waterbodies (hereinafter referred to generally as wetlands and streams). These values and services are essential to the health, safety and welfare of residents of the Town of Milan. These valuable natural resources benefit the entire Town and the surrounding region. The integrity of these resources and maintenance of their full functions and benefits is inextricably linked to the presence of intact, surrounding natural communities on adjacent upland buffer areas. Such communities are exceptionally rich in biodiversity and can protect or ameliorate water quality impacts from adjacent land uses. The essential functions and values provided by wetlands and watercourses include but are not limited to:
 1. Water quality protection and improvement. Wetlands act as settling ponds, filtering and trapping nutrients, like nitrogen and phosphorus, and other pollutants from stormwater runoff and facilitating chemical breakdown of pollutants. Wetlands also act as chemical and biological oxidation basins, treating pollutants including toxic substances through natural biological degradation and chemical oxidation.
 2. Watersheds. Wetlands and streams are an important component of watersheds, upon which thousands of Dutchess County residents depend for a clean water supply. Public health and property in one area of a watershed may be affected by loss of wetland functions in another area of the same watershed.
 3. Groundwater recharge and discharge. Wetlands and streams preserve surface water sources, recharge groundwater and aquifers upon which virtually all of Milan's residents depend for a source of drinking water, and maintain stream flows and water supplies.
 4. Flood control. Wetlands and streams convey floodwater flows from upstream to downstream points; store and slowly release floodwaters, reducing stream flows during periods of high water and maintaining base flows during droughts. The US Army Corps of Engineers' wetland protection and restoration efforts along the

Charles River in and near Boston have been valued at \$17 million per year, which is the estimate of flood damage if the wetlands were drained or filled.

5. Sediment control. Wetlands function as settling basins for naturally occurring sedimentation. Wetland vegetation binds soil particles and retards the movement of sediment in slowly moving waters.
6. Recreation. Wetlands and streams provide recreation areas for hunting, fishing, boating, hiking, bird-watching, photography, and other beneficial uses.
7. Food chain support and nutrient cycling. Wetlands and streams supply food and organic detritus that support fish and wildlife of adjacent waters and they facilitate nutrient export to other habitats.
8. Wildlife habitat. Wetlands and streams serve as nursery and sanctuary for freshwater fish. They provide water, and important nesting, breeding, feeding, migratory cover, and wintering habitat for diverse fish and wildlife species including many listed by New York State as threatened, endangered, and special concern. The perpetuation of scores of species depends on wetlands and other water resources.
9. Biodiversity. Wetlands are characterized by very high productivity and support a significant biological diversity of species, including many rare plants. More than 40 percent of the world's species are estimated to inhabit freshwater wetlands. Native biological diversity is diminishing in Milan and elsewhere at a pace that is of great concern to scientists and others.
10. Turtles. The Hudson Valley (including the Town of Milan) has one of the most diverse turtle populations in the country. Preservation of healthy wetlands habitat is critical to their survival.
11. Natural areas. Wetlands and streams preserve natural open space and rural character; provide visual relief from development and a sense of connection with the natural world.
12. Education and research. Wetlands and streams provide outdoor laboratories for research and living classrooms for schoolchildren in hands-on environmental studies.
13. Ecosystem values. Ecosystem values, such as those described above, were estimated in a 1997 peer reviewed article in the Journal Nature to be as high as \$7,924 per acre per year for wetlands and floodplains. These factors are extremely important ones for Milan from an economic as well as an ecological perspective.

14. Climate Change Mitigation. Wetlands have been estimated to store as much as 40 percent of global terrestrial carbon. Destruction of wetland areas cause the release of carbon dioxide, the gas that accounts for a majority of the global warming effect.

C. The integrity of wetlands and streams and maintenance of their full functions and benefits is inextricably linked to the presence of intact, surrounding natural communities on adjacent upland buffer areas. As a boundary between ecosystems, natural buffer zones are exceptionally rich in biodiversity and can protect or ameliorate water quality impacts from adjacent land uses. Essential functions and values provided by intact and appropriately vegetated buffers include but are not limited to:

1. Flood control. Natural buffer zones intercept, slow, and absorb overland runoff, enhancing wetland flood control, protecting floodplains, and providing for the gradual release of flood flows within watersheds.
2. Nutrient and pollutant removal. Natural buffer zones filter overland runoff, protecting surface waters from eutrophication (excess nutrient enrichment), and reduce or remove pollutants (including road salt, fertilizers, herbicides, pesticides, and heavy metals) from stormwater runoff before they reach wetlands and streams.
3. Bank stabilization and shoreline anchoring. Natural buffer zones intercept the soil-erosive force of runoff, stabilize banks and stream channels and provide a practical and cost effective means of controlling or preventing soil erosion and sedimentation of water resources.
4. Natural areas. Natural buffer zones preserve natural open space and rural character, provide visual relief from development and a sense of connection with the natural world.
5. Habitat. Natural buffer zones provide important and often critical, travel corridors and wetland-to-upland transitional habitats vital to the survival of many wetland and stream dependent species. Undisturbed natural buffers are an irreplaceable habitat link in the life cycles of many species. Stream buffers of at least one hundred (100) feet, with sufficient undisturbed native vegetation, are critical for the maintenance of viable trout fisheries.
6. Visual/ Noise barrier. Natural buffer zones protect wetlands and stream dependent wildlife from human disturbances.
7. Recreation. Natural buffer zones provide significant areas for passive recreation including hunting, fishing, boating, hiking, bird-watching, photography, and other beneficial uses.

8. Temperature and microclimate regulation. Natural buffer zones ameliorate harsh environmental conditions to: a) facilitate warming of surface waters during spring to produce water temperatures vital to breeding cycles of many water-dependent species; and b) provide shade, particularly during the growing season, to maintain cool, well-oxygenated water during dry or warm periods.
 9. Detrital input. Natural buffer zones provide organic (e.g. leaf) litter and woody debris that are important sources of food and energy for fish and aquatic invertebrates.
 10. Education and research. Natural buffer zones, as unique wetland-to-upland transitional communities, provide valuable opportunities for outdoor education and scientific research.
- D. The Town of Milan benefits from water resources that have contributed and continue to contribute greatly to agriculture, commerce, outdoor recreation, property values, scenery and quality of life. Adequate and suitable water for domestic supply, as well as municipal, agricultural and commercial uses, the growth of forests, support of fish and wildlife, recreational enjoyment and other uses is essential to the health, safety, welfare and economic prosperity of the Town.
- E. Population growth along with economic and recreational activities have made and will continue to make new and greater demands on water bodies and watercourses for boating, fishing, bathing and water sports, and the lands adjacent thereto for access areas and recreation. Uncontrolled development in and adjacent to wetlands and streams has resulted in the filling in, diversion and destruction of wetlands and watercourses, destroying aquatic habitats and lessening supplies of water for multiple use purposes. The uncontrolled and unnecessary interference with and disturbance of wetlands and streams can create hazards to the health, safety and welfare of the Town's residents and cause great economic loss by erosion of soil, increased costs of water purification and treatment, flooding, the destruction and failure of natural propagation of fish and aquatic resources and the loss of water for domestic, municipal, agricultural, recreational and other beneficial uses and purposes. The Town of Milan has the responsibility to preserve, protect and conserve such resources from destruction and damage and to promote the natural propagation of associated biota.
- F. Runoff from land use development activities, also known as nonpoint source pollution, is the primary cause of water quality degradation. Nonpoint source pollution results from the activities of the population as a whole and is increased when additional impervious surfaces are constructed. Town regulations are needed to avoid the destructive impacts of such activities, by protecting wetlands, watercourses, waterbodies and their associated natural buffers, thereby reducing the damage from water-polluting and degrading activities.

- G. The objectives of the Town of Milan *Comprehensive Plan* include protecting the community's many resources for the future by enhancing the natural beauty and rural quality of the community and protecting environmentally sensitive areas and natural resources, waterways, flood plains and wetlands. The *Comprehensive Plan* recommends that the Town protect its unique physical attributes and natural resources. Article XIV of the New York State Constitution states "The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources." State agencies such as the Department of Environmental Conservation and the Department of State encourage municipalities to preserve wetlands and open spaces, including the adoption of local regulatory legislation. In the case of wetlands and streams, this responsibility can most effectively and efficiently be accomplished by enactment of local legislation to preserve, protect, and conserve wetlands and watercourses currently not under Federal and State regulatory protection.

§ 191-4 Legislative Intent

- A. The Town Board of the Town of Milan has determined that the public interest, health and safety and the economic and general welfare of the residents of the Town will be best served by providing for the protection, preservation, proper maintenance and use of the Town's surface waters including ponds, lakes, reservoirs, water bodies, rivers, streams, watercourses, wetlands, natural drainage systems, storm water management areas and adjacent land areas and protecting them from encroachment, spoiling, polluting or elimination resulting from development, road construction and/or disregard for natural resources.
- B. Wetland and stream protection is a matter of concern to the entire Town. The establishment of regulatory and conservation practices ensures review and regulation of development activities on or along wetlands, watercourses, waterbodies and their associated buffers that might adversely affect the health, safety and welfare of the Town's residents. A consistent approach is required for effective wetlands protection throughout the Town.
- C. Regulation of wetlands, streams and their associated buffers is consistent with the legitimate interests of farmers to graze and water livestock, make reasonable use of water resources, harvest natural products of wetlands and streams and their associated buffers, and otherwise engage in the use of land for agricultural production as regulated by New York State Agriculture and

Markets Law, Article 11-A Agricultural Environmental Management, Sections 150 through 151-I.

- D. Regulation of wetlands, streams and their associated buffers is consistent with legitimate sustainable forest management, when conducted in accordance with the "Timber Harvesting Guidelines" and "Forestry Best Management Practices for Water Quality" as published by the New York State Department of Environmental Conservation.
- E. The State of New York has enacted legislation entitled the "Freshwater Wetlands Act," found in Article 24 of the Environmental Conservation Law, which authorizes local governments to establish their own procedures for the protection and regulation of wetlands within their jurisdiction. Section 24-0509 of the ECL specifically recognizes the right of local governments to establish laws pertaining to freshwater wetlands so long as they are at least as protective of freshwater wetlands as any regulations in effect pursuant to Chapter 43-B of the Consolidated Laws, or any rule or regulation promulgated pursuant to the provisions of Article 24 of ECL or pursuant to a local freshwater wetland protection law or ordinance adopted by a county pursuant to §24-0501 of the ECL. The New York State Department of Environmental Conservation has promulgated implementing regulations for local government adoption of Article 24 authority, found in Part 665 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Part 665). The Milan Wetlands and Watercourse Protection Law is enacted pursuant to the above-referenced law and any and all applicable laws, rules and regulations of the State of New York, and nothing contained herein shall be deemed to conflict with any such laws, rules or regulations.
- F. It is the intent of this Law to protect areas that are not currently regulated under state and federal programs, and to provide locally increased protection to areas currently regulated by state and federal programs.
- G. It is the intent of this Law to discourage activities which are not dependent on aquatic resources by prohibiting discharges of dredged or fill material in wetlands when less damaging alternatives are available, and presuming such alternatives to be available if a development project is not a water-dependent project.
- H. It is the intent of this Law to incorporate the consideration of wetlands and watercourse protection, as well as that of their associated buffers, into the Town's land use and development approval procedures, to provide a reasonable balance between the rights of individual property owners to the use of their property and the rights of both present and future generations of Milan's residents.

§ 191-5 Approval Authority.

The Planning Board of the Town of Milan is hereby authorized to issue Wetland Permits in accordance with the review and approval procedures found in § 191-11. The Planning Board shall be empowered to require the posting of bonds, as necessary, and to revoke or suspend a wetlands permit where lack of compliance is established.

§ 191-6 References, Definitions and Word Usage.

A. **References.** The following documents are referenced in the Law. Dates refer to the publications in effect at the time of adoption of this Law. The Planning Board office will maintain copies of these documents for review and will provide a current list of where these documents can be obtained. Applicants are responsible for obtaining the cited publication from the respective agency or the Town of Milan:

1. *US Army Corps of Engineers Wetland Delineation Manual*. (1987) herein referred to as the *Wetland Delineation Manual*.
2. *Best Development Practices (BDPs): Conserving Pool-Breeding Amphibians in Residential and Commercial Developments in the Northeastern United States*. WCS/MCA Technical Paper No. 5. By Aram J. K. Calhoun and Michael W. Klemens, MCA, 2002, herein referred to as Calhoun and Klemens.
3. New York State Forestry, *Best Management Practices for Water Quality, BMP Field Guide*, NYSDEC, January 2000.
4. *Timber Harvesting Guidelines*, (1975). NYSDEC.
5. *Forest Road Construction Handbook*, (1973). NYSDEC.
6. *Stormwater Management Design Manual*, (2003). NYSDEC.
7. *Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates, and Fish*. (2002). US EPA.
8. *Hudson Basin River Watch Guidance Document*, (2000). Hudson Basin River Watch.
9. *Town of Milan Habitat Assessment Guidelines*. (2005). Town of Milan Planning Board.

10. *Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs*. Scheuler, T. 1987. Metropolitan Washington Council of Governments, Washington, D.C..

B. Definitions and Word Usage. As used in this Law, the following terms shall have the meanings indicated.

AGRICULTURAL LANDS – Lands that are located within an established Agricultural District adopted by Dutchess County and certified by the State of New York and a) are qualified under Dutchess County and New York State law for an agricultural exemption by the Town Assessor; or b) in possession of a letter stating the property conforms with the farm operation definition in the New York State Agriculture and Markets Law based on the findings of the Dutchess County Agricultural and Farmland Protection Board.

ASSOCIATED BUFFER - A regulated upland area, including bank as defined herein, surrounding a wetland, watercourse or waterbody that is intended to provide protection to the wetland, watercourse or waterbody from human activity and other encroachments. The associated buffer shall be that area extending one hundred (100) feet horizontally away from and parallel to the wetland boundary or high water line of the watercourse or waterbody. The buffer includes the bank, and may extend beyond one hundred (100) feet where bank slopes are steep (as described under 'bank' below).

BANK - The land immediately adjacent to, and which naturally slopes towards, the bed of a watercourse and which is necessary to maintain the integrity of a watercourse. Bank will not be considered to extend more than fifty (50) feet horizontally from the mean high water line, with the following exception: where a generally uniform slope of 25 percent or greater adjoins the bed of the watercourse, the bank is extended to the crest of the slope or the first definable break in slope, either a natural or constructed feature (i.e. road), lying generally parallel to the watercourse.

CLEARCUTTING – Clearcutting is defined as the cutting of trees over six inches in diameter at breast height over any 10-year cutting cycle where the average residual basal area of trees over six inches in diameter at breast height remaining after such cutting is less than 30 square feet per acre, measured within the area harvested. Provided, however, that where regeneration is assured by stand conditions such that after such cutting, the average residual basal area of trees at least one inch in diameter at breast height is at least 30 square feet per acre, measured within the area harvested, a clear cut will not be deemed to have taken place unless the average residual basal area of trees over six inches in diameter at breast height is less than 10 square feet per acre, similarly measured.

CONSERVATION ADVISORY COUNCIL - The duly appointed Conservation Advisory Council of the Town of Milan.

CONSERVATION EASEMENT – A form of a land protection agreement whereby an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of Article 49, § 49-0303.1 of the New York State Environmental Conservation Law (ECL), which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in § 49-0301 of the ECL.

DISCHARGE - The emission of any water, liquid or solid material, as defined herein, into a wetland, watercourse or waterbody or their buffers, whether or not such substance causes pollution.

FACULTATIVE SPECIES - Vegetative species that can occur in both wetland and upland systems. There are three (3) subcategories of facultative species: facultative wetland (FACW), facultative (FAC), and facultative upland (FACU). Under natural conditions a facultative wetland species is usually (estimated probability 67-99%) found in wetlands, but occasionally in uplands. A facultative species has a similar likelihood (estimated probability of 34-66%) of occurring in both wetlands and uplands. The facultative upland species is usually (estimated probability 67-99%) found in uplands, but occasionally in wetlands. Facultative species for the Northeast are listed in the *National List of Plant Species that Occur in Wetlands, New York State* (1988).

FRESHWATER WETLAND- see Wetland/Freshwater wetland

GRADING - To adjust the degree of inclination of the natural contours of the land, including leveling, smoothing and other modification of the natural land surface.

HYDRIC SOIL - A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in its upper portion. The concept of hydric soils includes those developed under sufficiently wet conditions to support the growth and regeneration of hydrophytic vegetation. Soils that are sufficiently wet because of artificial measures are included in the concept of hydric soils. Also, soils in which hydrology has been artificially modified are hydric if the soil, in an unaltered state, was hydric. Some series, designated as hydric, have phases that are not hydric depending on water table, flooding, and ponding characteristics.

HYDROPERIOD - The seasonal pattern of water-level fluctuations in a wetland.

INTERMITTENT WATERCOURSE - A watercourse consisting of a channel which contains non-tidal, flowing water for only part of the year. When the water is not flowing, it may remain in isolated pools or surface water may be absent.

LAND PROTECTION AGREEMENT - An imposition on lands by deed restriction or, preferably, by conservation easement pursuant to Article 49 of New York

State Environmental Conservation Law, to preserve the environmental, ecological, biological, hydrological, or other functional values of regulated areas. Such a restriction shall run with the land, bind subsequent owners, be in a form approved by the Planning Board Attorney, and shall be recorded in the Office of the Dutchess County Clerk. A conservation restriction does not require a dedication of lands for public use, and the owners of the property, their successors and assigns otherwise retain their rights to full use and quiet enjoyment of their property.

MATERIAL - Substances including, but not limited to, soil, silt, gravel, rock, sand, clay, peat, mud, debris and refuse; any organic or inorganic compound, chemical agent or matter (excluding pesticides, herbicides, algacides and agricultural or radioactive wastes to the extent that same are exempt or regulated exclusively by the State of New York); sewage, sewage sludge or effluent; and industrial or municipal solid waste.

MITIGATION PLAN - The plan prepared by an applicant for a wetlands permit to compensate for the proposed wetland, watercourse and wetland/watercourse buffer impacts pursuant to the standards and requirements of this Law.

OBLIGATE WETLAND SPECIES - 1) Plant species that, under natural conditions, always occur in wetlands (i.e., greater than 99% of the time) and/or 2) Animal species that depend on vernal pools for successful breeding.

PERENNIAL WATERCOURSE – A river, stream, creek, or brook through which surface water travels on a continual or nearly continual basis.

PERMIT, WETLANDS - That form of Town approval required by this Law for the conduct of a regulated activity within any area of the Town of Milan defined as a “wetland” or “wetland/watercourse associated buffer”.

POLLUTION - The presence in the environment of human-induced conditions or contaminants in quantities or characteristics, which are or may be injurious to human, plant or animal life or to property.

REGULATED ACTIVITY - Those activities to be conducted in wetlands, wetland buffers, watercourses or waterbodies that require a wetlands permit from the Town.

SOIL SCIENTIST - A person having special knowledge by reason of education or experience of the physical, chemical and biological sciences applicable to the genesis and morphology of soils as natural bodies and of the methods to describe, classify, and map soil units.

STORMWATER MANAGEMENT AREA - The area for which stormwater has been addressed in a Stormwater Pollution Prevention Plan (SWPPP) prepared pursuant to the Environmental Protection Agency’s (EPA) and New York State Department of Environmental Conservation’s (NYSDEC) Phase II Storm Water Regulations.

STREAM CORRIDOR - A stream and its adjacent banks, floodplain, and riparian buffer zone adjoining the banks of the stream.

STRUCTURE - A combination of materials assembled at a fixed location for use, occupancy or to give support such as a building, bridge, trestle, tower, platform, fence, pavement, sign or flagpole.

VERNAL POOL- (sometimes referred to as an intermittent woodland pool) – A type of wetland (see Wetland/Freshwater wetland below).

WATERBODY - Any natural or artificial pond, lake, reservoir or other area which usually or intermittently contains water and which has a discernible shoreline.

WATERCOURSE - Any natural, permanent, seasonal or intermittent channel or water segment, rivers, streams, brooks, naturally occurring impoundments within such channels or other waterways that are contained within, flow through, or border on the Town of Milan. A watercourse contains a discernible channel, bed, banks, and or berm, and normally flows by gravity in a particular direction.

WATERSHED - A region of land that drains downward to a particular body of water. It has interconnected streams, lakes, wetlands, and underground waters moving generally downhill to the body of water the watershed is named for.

WETLAND DELINEATOR - A person having detailed scientific knowledge about the biogeophysical structure, function, or inter relationships of terrestrial and aquatic/semi-aquatic plant and animal communities. A qualified wetlands delineator shall have a degree from an accredited college or university in a related field and a minimum of two (2) years of wetland delineation experience. This person must demonstrate training and experience in the identification of regulated areas as listed in §191-7 and the use of the *Wetland Delineation Manual* and 6 NYCRR Part 664 Freshwater Wetlands Regulations, including preparation of state and federal data forms and wetlands delineation reports.

WETLAND DELINEATION – The process by which the boundary or edge of a wetland is determined.

WETLANDS REVIEW PROFESSIONAL – A wetlands review professional, also referred to herein as WRP, is a qualified environmental scientist, whom the Milan Town Board appoints to carry out the functions described in this Law. A qualified Wetlands Review Professional shall have a degree from an accredited college or university in a related field and a minimum of two (2) years of delineation experience and scientific knowledge about the biogeophysical structure, function, or inter-relationships of terrestrial and aquatic/semi-aquatic plant and animal communities.

WETLAND/FRESHWATER WETLAND - Wetlands are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include but are

not limited to: swamps, marshes, bogs, fens, intermittent streams, vernal pools, and shallow water zones of rivers, lakes, ponds and other water bodies.

Wetlands have the following environmental characteristics:

- (1) Wetland vegetation. The prevalent vegetation is typically adapted to areas having hydrologic and soil conditions described above. Wetland vegetation is present if more than 50 percent of the dominant species are listed as Obligate, Facultative Wet, or Facultative on the *USFWS Wetland Plant List (National List of Plant Species That Occur in Wetlands: 1988 National Summary)*. Additional indicators of vegetation associated with wetlands are listed in Paragraph 35 of the *Wetland Delineation Manual*.
- (2) Wetland soil. Soils are present and have been classified as Hydric, or they possess characteristics that are associated with saturated soil conditions. Indicators of these soils are listed in Paragraphs 44 and 45 of the 1987 *Wetland Delineation Manual*.
- (3) Wetland hydrology. Wetlands are inundated either permanently or periodically at mean water depths equal to or less than 6.6 ft, or the soil is saturated to the surface at some time during the growing season. Indicators of hydrologic conditions that occur in wetlands are listed in Paragraph 49 of the *Wetland Delineation Manual*.

This definition is from the 1987 *Wetland Delineation Manual*. Except in certain situations, such as disturbed areas described in the *Wetland Delineation Manual*, evidence of a minimum of one positive wetland indicator from each parameter (vegetation, soils, and hydrology) must be found in order to make a positive wetland determination.

§ 191-7 Regulated Areas

Regulated areas protected under this Law include the following:

- A. Freshwater Wetlands as defined in § 191-6.B.
- B. Intermittent and perennial watercourses. Artificial water segments, such as swales and ditching, shall not be considered a regulated area.
- C. Waterbodies as defined in § 191-6.B.
- D. Associated Buffer Areas as defined in § 191-6.B. For the purposes of protecting water quality or wildlife habitats based upon the findings of the wetland delineation, habitat assessment report or other information

ascertained during the wetlands permit review process, the Planning Board may increase the buffer area. Examples include, but are not limited to, the following: watershed protection, trout streams, steep eroding banks, habitat for species of conservation concern including but not limited to birds, amphibians, and reptiles.

The Town may require larger buffers for effective protection and preservation of habitat and water quality pursuant to Article 24-0701.2 of the New York State Freshwater Wetlands Act and 6 NYCRR Part 664.7.

§ 191-8 Controlled Acts

- A. **Prohibited Acts.** The following activities are prohibited within regulated areas, except as otherwise noted, because of their potential to significantly disrupt the ecological functioning of regulated areas:
1. Filling. Placement of fill materials of any type including but not limited to soil, gravel, sand, wood chips, stones, and solid waste (see also § 171, Solid Waste of the Town of Milan Code) except as noted in § 191-8.C, for agricultural purposes.
 - a. The dumping of biodegradable yard waste (including grass clippings) is prohibited within wetlands, waterbodies and watercourses but is a non-regulated act within buffer areas (see § 191-8.C).
 2. Draining. The depletion of water, directly or indirectly, except for agricultural purposes as noted in § 191-8.C(6).
 3. Discharging materials that are toxic or otherwise harmful to the biota and ecological functioning of regulated areas, including but not limited to:
 - a. Chemicals including pesticides, herbicides, fungicides, dye, fertilizers, fuels, and de-icing materials except as necessary for wetland restoration projects (see § 191-8.B(7)), or agricultural purposes (as noted in § 191-8.C(6)).
 - b. Influent of sufficiently high thermal content to cause harm to regulated area biota.
 - c. Sewage or sanitary sewage disposal system effluent, untreated or insufficiently treated effluent or other liquid wastes including untreated stormwater runoff.
 - d. Radioactive wastes.

4. Construction of new structures within a wetland or watercourse except for agricultural purposes (see § 191-8.C). Construction in buffer areas is a regulated activity requiring a permit pursuant to 191-8.B.
5. Construction of stormwater management facilities including detention/retention basins and ponds.
6. The installation of sanitary sewage disposal system for new construction except under limited circumstances as provided in §191-8(B)(2). Replacement or repair of existing systems is a regulated activity requiring a permit as provided in §191-8(B)(2).
7. Removal of vegetation:
 - a. Clearcutting or removal of trees, shrubs, and other vegetation except as activities listed under § 191-8.C, or as necessary for wetland restoration projects (see § 191-8.B(7)).
 - b. Replacement of buffer vegetation with lawn.
8. Mining activities as defined in the Town of Milan Zoning Law.
9. The location of animal feedlots or pens, manure stockpiles or similar animal storage areas
10. The use of all motorized vehicles except for maintenance or agricultural purposes.

B. Regulated Acts. Regulated acts are any activities that have the potential to cause substantial adverse impacts in regulated areas. It shall be unlawful to perform any of the following activities within regulated areas without a duly issued wetlands permit from the Town of Milan.

1. Dredging, excavation, or grading. This includes any removal of soil, mud, sand, gravel, peat, silt or other earth materials; alteration of natural drainage patterns; diversion or alteration of any flow of a watercourse, waterbody or wetland.
2. Sanitary sewage disposal systems: Replacement of existing sanitary sewage disposal systems on previously approved lots, or installation of a new system for a previously approved lot where no other alternative location is available.
3. Construction. All construction activities within associated buffer areas including but not limited to:
 - a. Placement of any impervious surface or new structure or facility including but not limited to swimming pools, gazebos, sheds,

garages, and additions to an existing structures that enlarge its footprint.

- b. Storage of construction materials, stockpiles, machinery or equipment.
 - c. Construction or expansion of paved or unpaved public or private roads or driveways or other pathways for motorized vehicles.
 - d. Installation of pipes, wells, service lines, conduits or cables.
 - e. Creation of a natural pond not associated with stormwater management facilities.
- 4. Construction of docks, dams, and other water control devices, pilings or bridges, whether or not they change the flow of the water.
 - 5. Expansion, restoration, or modification of existing structures, wells, bridges, driveways, walkways, walls, fences and stormwater facilities.
 - 6. Acts that affect hydrology: Activities that result in direct or indirect alteration of existing wetland, waterbody or watercourse hydrology, hydroperiod, or water flow including the following:
 - 7. Wetland restoration projects including removal of invasive plant species and revegetation.

C. Non-regulated Acts. The following acts are considered non-regulated acts that may proceed within regulated areas without a wetlands permit, provided that they do not constitute a pollution or erosion hazard, interfere with proper drainage or adversely affect reasonable water use by others. Such non-regulated acts shall conform to the Town of Milan Zoning Law and all other applicable laws.

- 1. Normal maintenance of existing landscaped areas and residential gardens, including existing lawn areas, and trimming and removal of dead or diseased vegetation, including trees.
- 2. Ordinary maintenance and repair of existing structures including but not limited to sanitary sewage disposal systems, wells, bridges, highways, streets, driveways, walkways, walls, docks, fences, which do not involve expansion, restoration, or modification.
- 3. Maintenance of existing drainage channels where impedance of flow may cause flooding or threaten public safety on highways or in dwellings or other structures.

4. Operation and maintenance of existing dams and water control devices, excluding the adjustment of water elevations over 18 inches in height (see § 191-8.B(6)).
5. Removal of vegetation as specified in subsections 191-8.C(5)a through c below. Removal of naturally occurring vegetation within regulated areas for the following purposes, provided that such actions do not impair the natural function(s) of a regulated area:
 - a. Creation of non-paved foot-paths with a maximum width of three feet.
 - b. Annual or periodic removal of trees to provide firewood for normal residential use. This does not include removal of trees for commercial use or sale. Clearcutting is a prohibited act (see § 191-8.A).
 - c. Selective harvesting and sustained-yield forestry when conducted in accordance with a forest management plan prepared by a New York State Department of Environmental Conservation Cooperating Forester in accordance with New York State's *Forestry Best Management Practices for Water Quality, Timber Harvesting Guidelines and Forest Road Construction Handbook*. Construction of landing areas and log haul roads are considered regulated acts subject to § 191-8.B.3. of this Law when located within a regulated area. The plan shall be on file with the Building Inspector.
6. Biodegradable yard waste in buffers. The placement of biodegradable yard waste typically associated with residential yard maintenance, including grass clippings, within the associated buffer area only (placement of these materials within a wetland, waterbody or watercourse is a prohibited act, see § 191-8.A);
7. Specified agricultural activities on Agricultural Lands. Activities associated with commercial grazing and watering livestock, crop production and making reasonable use of water resources on agricultural lands as defined in § 191-6 including:
 - a. harvesting the natural products of wetlands;
 - b. clear-cutting of vegetation, other than trees, for growing agricultural products;
 - c. constructing winter truck roads of less than 16.5 feet in width for removing trees cut in accordance with 6 NYCRR 663.2(c)(1)(iv), where such construction is limited to cutting vegetation and compacting ice and does not alter water flows;
 - d. operating motor vehicles for agricultural purposes;
 - e. draining for growing agricultural products;

- f. erecting structures, including fences, required to enhance or maintain the agricultural productivity of the land;
 - g. using chemicals and fertilizers according to normally accepted agricultural practices, in order to grow crops for human and animal consumption, in or adjacent to wetlands, where authorized by other state, federal or Laws, including application of stabilized sludge as fertilizer when applied at agronomic loading rates in accordance with a valid 6 NYCRR Part 360 or Part 364 landspreading permit;
 - h. Otherwise engaging in the use of wetlands for growing agricultural products such as crops, vegetables, fruits, or flowers.
8. Passive recreation: Bird and wildlife observation, photography, boating, hiking, swimming, camping, picnicking, hunting and fishing and other similar outdoor activities, including the establishment of nonpaved walking trails and individual recreational moorings, where no substantial adverse effect is involved or the activity is not otherwise prohibited.
9. Research: Conducting educational and scientific research activities where no substantial adverse effect is involved.
10. Public services: Activities and uses essential to ensure adequate police, fire, and rescue functions including emergency road maintenance undertaken by the Town of Milan, Dutchess County, State of New York, any political subdivision or by a non-profit organization authorized by contract with the Town to provide public services.
11. Installation of dry hydrants.

D. Unlisted acts. Any other activities not listed in Sections A, B, or C, are permitted acts that do not require a wetlands permit.

§191-9 Nonconforming uses, area and bulk.

- A. The lawful use, as defined in the Schedule of Use Regulations of the Town of Milan Zoning Law, of any land, building or structure or a part thereof existing at the time of adoption of this Law or any amendment thereto becomes effective may be continued, although such use does not conform with the provisions of this Law, except as otherwise provided in this section of the document.
- B. For maintenance, repair, expansion or modification of existing nonconforming structures, see § 191-8 on Controlled Acts for more information.
- C. Pre-existing, nonconforming lots. A lot in existence on the effective date of this Law, which because of its size or configuration and location relative to a regulated area does not allow for any permitted use of the land (as defined in the Schedule of Use

Regulations of the Town of Milan Zoning Law) due to strict adherence to the standards contained herein may be eligible for a wetlands permit. The Planning Board may consider waiver(s), pursuant to § 191-10, from the standards in this Law provided the lot complies with all the area and bulk regulations for the District in which it lies or the provisions of §200-15 of the Town's Zoning Code.

§191-10 Permit Waivers.

- A. Where the Planning Board finds that compliance with the standards herein would cause extraordinary difficulties due to exceptional conditions of topography, access, location, shape, or other physical features of the site, the minimum requirements of these regulations may be waived in order to mitigate the difficulty, provided that the public interest is protected, the wetlands permit is in keeping with the general spirit and intent of these regulations and full compliance with SEQR is still provided. Permit waivers shall be considered upon specific request by an applicant or by motion of a Planning Board member and by resolution of the Planning Board.
1. Permit waivers for prohibited acts (§ 191-8.A, Controlled Acts) are limited to filling, constructing, placing of structures and the installation of sanitary sewage disposal systems.
 2. All requests for permit waivers to the standards herein by the applicant shall be submitted in writing, shall be expressly set forth in the minutes of the Board, shall be noted on the wetlands permit and shall include the following:
 - a. Document existing conditions;
 - b. Describe the applicant's intentions;
 - c. Cite the specific sections of the regulations for which relief is requested and the proposal for relief;
 - d. Describe how the proposal relates to the purposes of this Law.
 3. The Planning Board will consider the extent to which the applicant can demonstrate:
 - a. Proposed structures are located outside of a regulated area to the maximum extent possible.
 - b. Stormwater management has been developed and will be implemented and maintained according to the New York State Stormwater Management Guidelines so that water quality impacts to regulated areas are minimized to the greatest extent possible including short term and long term impacts.

- c. Appropriate native plant species shall be used to revegetate disturbed regulated areas.
- 4. No such permit waiver may be granted if it would have the effect of nullifying the intent and purposes of this Law, the Town *Comprehensive Plan*, or Town Zoning Law.
- 5. The Planning Board may, in granting permit waivers to the standards herein, incorporate such reasonable conditions, including deed restrictions and declarations, as will in its judgment substantially secure the objectives of the requirements so waived.

§ 191-11 Procedures for permits

A. This Law applies to the following:

- 1. Building Permit Applications. All building permit applications submitted on or after the effective date of this Law shall be required to obtain a Town wetlands permit if the proposed project involves a regulated act occurring within a regulated area. All building permit applications will be subject to review of the following data by the Wetlands Review Professional:
 - a. An initial review of readily available data including:
 - i. A copy of the previously recorded final plat in the Dutchess County Clerk's Office including but not limited to restrictions, notes or blocks recorded.
 - ii. Hydric Soils Map.
 - iii. Topographic features and streams.
 - iv. DEC and NWI Wetlands maps.
 - v. Aerial Photography.
 - b. The Town Wetlands Review Professional will determine the presence or absence of regulated areas. If regulated areas are not present, the application for a building permit proceeds according to existing Town procedures for processing and issuance of building permits.
 - c. If a regulated area(s) is identified, the Wetland Review Professional will determine if the proposed action requires a wetlands permit application. A site visit may be necessary for this determination. If the Wetlands Review Professional

determines that a wetlands permit application is required, he/she shall notify the applicant. The applicant is directed to § 191-11C for a list of submission requirements.

2. Planning Board and Zoning Board of Appeals applications submitted on or after the effective date of this Law and as identified in § 191-11.A(3).
 3. Planning Board Applications. For all subdivision, site plan and Type B special use permit applications made to the Planning Board the determination of whether a Town wetlands permit shall be required will be made during the application review process by the Planning Board in consultation with the Wetlands Review Professional.
 4. Zoning Board of Appeals Applications. The Zoning Board of Appeals shall refer any application for a Type A special use permit to the Wetlands Review Professional for a determination of whether a Town wetland permit is required. The Wetlands Review Professional shall make the determination as described in § 191-11A.1 above. For all variance applications, the Building Inspector shall simultaneously refer all building permit applications to the Zoning Board.
- B. **Exemptions.** Subdivision applications which have received preliminary approval before the effective date of this Law shall be exempt from these regulations for a period of three years from the date of the filing of the approved plat at the Dutchess County Clerk's office.
- C. General Procedures for wetlands permit applications.
1. Planning Board Action on a wetlands permit. The Planning Board shall, in accordance with the following subsections, render a decision to approve, approve with modifications, or deny the wetlands permit application. In approving any wetlands permit application, the Planning Board may impose such conditions or limitations as it deems necessary to ensure compliance with the intent, purposes, and standards of this Law. The Planning Board shall state upon the record its findings and conclusions for all actions taken.
 - a. Applications considered as part of a Planning Board review of subdivision, site plan, or special use permit and Zoning Board of Appeals review of special use permit. The decision to approve, approve with modifications or deny the wetlands permit shall be made at or before the decision on a subdivision, site plan or special use permit application has been granted by the respective board. Default approval of a subdivision application shall not constitute a default approval of a wetlands permit.
 - b. For all building permit applications. The Planning Board shall, within sixty-two (62) days of the filing of a complete wetlands

permit application, render a decision on the application unless extended by mutual agreement between the Planning Board and applicant. An application will be deemed complete when all information reasonably necessary to make a wetlands permit decision has been submitted to the satisfaction of the Planning Board.

- c. Following action by a concurring vote of a majority of members of the Planning Board to approve or approve with modifications an application for a wetlands permit, the Board shall issue a written resolution which shall be filed with the Town Clerk within five business days and shall include the following:
 - i. An assigned application number;
 - ii. The name and address of the applicant;
 - iii. The name and address of the property owner (if different from the applicant);
 - iv. The address and Tax Map designation of the property;
 - v. The date of the Planning Board action on the application;
 - vi. All conditions placed on the regulated activity;
 - vii. The date by which work is to be completed;
 - viii. The expiration date of the wetlands permit.

The Board shall direct the Wetlands Review Professional to issue a permit.

- e. Following action by a concurring vote of a majority of members of the Planning Board to deny an application, the Planning Board shall direct the Wetlands Review Professional to notify the applicant in writing of the denial and the reasons therefore.
- 2. Site Visit(s). The Wetlands Review Professional shall be authorized to conduct a site visit, whenever deemed necessary, for the purpose of evaluating the wetlands permit application. The Wetlands Review Professional shall be authorized to verify all wetland delineation boundaries and make adjustments to them if necessary based on the wetland delineation methodology described in the *Wetland Delineation Manual*.
 - 3. Public Hearing and Notice. Upon receipt of a complete wetlands permit application, the Planning Board shall schedule a public hearing on the

application within 30 days or as soon thereafter as the Planning Board's agenda allows.

- a. The Board shall provide notice of the substance of the application by certified mail, return receipt requested, of the public hearing to:
 - i. The applicant, at which hearing the applicant shall appear in person or by agent.
 - ii. The owners of the property abutting the property that is the subject the application and all other owners located within two hundred (200) feet, from the exterior boundaries of the property that is the subject of application, as the names of said owners appear on the last completed assessment roll of the Town.
- b. The Board shall place a notice in the official Town newspaper for publication of the notice therein at least five days prior to the public hearing.
- c. All costs incurred for publication and mailing of notices for the public hearing shall be paid for by the applicant.
- d. The Planning Board may waive public hearing requirements as set forth herein, provided the decision and reasons for any such waiver pursuant to this paragraph shall be clearly set forth in the official record and shall be no less protective of regulated areas

4. Expiration of Permit.

- a. A wetland permit shall be valid for a period of two (2) years for those issued in conjunction with a Building Permit application, site plan approval or special use permit approval.
- b. A wetland permit shall be valid for a period of three (3) years from the date of the filing of the Final Plat when issued in conjunction with a subdivision application.
- c. Permits may be extended by the Planning Board upon review and recommendation by the Wetlands Review Professional for applications submitted at least sixty (60) days before the expiration of the wetlands permit. Standards for issuance of renewals shall be the same as for the issuance of permits.
- d. Upon completion of the work specified in the wetlands permit, the applicant shall be responsible for contacting the WRP to verify that the wetlands permit conditions have been satisfactorily completed. The Building Department shall not

issue a Certificate of Occupancy until satisfaction of the wetlands permit has been deemed complete by the Wetland Review Professional

5. Inspection. Work being conducted pursuant to a wetlands permit shall be open to inspection at any reasonable time upon reasonable notice, including weekends and holidays, by the Town Engineer, the Wetlands Review Professional, or by members of the Planning Board, Conservation Advisory Council or their designated representatives. The applicant shall reimburse the Town for the costs of such inspection when incurred by outside consultants hired by the Town for this purpose.
6. Other permits. Conformance with this Law does not eliminate the necessity for any applicant to obtain the approval or permits required by any other agencies including but not limited to the NY State Department of Environmental Conservation or US Army Corps of Engineers, prior to construction authorized by the wetlands permit. Obtaining such approval or permits is the sole responsibility of the applicant.
7. Fees. Fees for wetlands permit applications are listed in the Town's Fee Schedule (See §A-208 of the Town Code) as amended by the Town Board from time to time
8. Reimbursement for professional consulting services. The Planning Board, in the review of a wetlands permit application, may refer such application to such engineering, planning, environmental or other technical or legal consultant as deemed reasonably necessary by the Planning Board to enable it to review such application as required by law, with all consultant fees to be paid by the applicant. At the beginning of the review process, the Planning Board may require the applicant to fund an escrow account, from which the Town may draw, to ensure reimbursement of consultant fees. During review of the application, the Planning Board may require the applicant to replenish the escrow account, as it deems necessary, to continue its review of the wetlands permit application. If the required funds are not added to the escrow account, review of the application by the Planning Board shall be suspended until such time, if any, as payment of said funds is made. Any remaining funds in the escrow account after payment of all consultant fees will be returned to the applicant.

D. Submission Requirements.

1. Where there is a conflict between the submission requirements for site plan, special use permit or subdivision plat approval and the submission requirements of this Law, the stricter of two regulations shall apply.

2. General Application contents. An application for a wetlands permit subscribed by the owner or agent shall be filed with the Secretary of the Planning Board, at least fourteen (14) days prior to the regular meeting of the Planning Board and shall contain the following information:
 - a. Name, post office address and telephone number of owner and applicant.
 - b. Street address and Tax Map designation of property covered by the application.
 - c. Statement with consent from owner for any agent making application.
 - d. Statement of proposed work and purpose thereof.
 - e. Owner's permission to allow visits to site by Town authorities designated herein.
 - f. Plans for the proposed regulated activities shall be submitted, unless otherwise specified by the Wetlands Review Professional, based on project size, configuration, and proximity to regulated areas, drawn to a scale of not less than one (1) inch equals thirty (30) feet. The plans shall be certified by an engineer, architect, land surveyor or landscape architect licensed by the State of New York. Plans shall show the following:
 - i. Delineation of all wetlands by a qualified ecologist, botanist and/or soil scientist no earlier than twelve (12) months prior to the date of filing the application. Delineations shall be conducted in accordance with the methods described in Part IV of the 1987 *Wetland Delineation Manual*. The delineation may require verification by a third party professional ecologist, botanist or soil scientist. The Town may refer the wetlands delineation to a wetlands delineator to confirm an applicant's delineation. The Town may require re-delineation of any wetland, including NWI or DEC wetlands, in cases where original delineations were conducted outside the normal growing season, on sites where wetland vegetation has been removed so that species identification is impossible or not recognizable, or when specific site conditions warrant additional examination.
 - ii. Location of all wetlands, waterbodies and watercourses within five hundred (500) feet of the subject property, and

their hydrologic connection to waterbodies onsite. This shall be based on existing aerial, soils or topographic maps; delineation is not required.

- iii. All areas of construction disturbance and post-construction impervious surfaces, and their relationship to property lines, buildings, roads and watercourses within two hundred fifty (250) feet of a regulated area.
- iv. Location of any well and depth thereof and any sewage or wastewater disposal system within one hundred (100) feet of the disturbed area. Wells and sewage or wastewater disposal systems that are not under the ownership or control of the applicant are not required to be shown.
- v. Existing and adjusted contours at two-foot intervals in the proposed disturbed area and to a distance of one hundred (100) feet beyond.
- vi. Locations and details of any existing and proposed stormwater management facilities, including point discharges, detention basins, and erosion controls, and schedules for the maintenance of such facilities.
- vii. Where creation of a lake or pond or alteration of a watercourse or wetland is proposed, details of the construction of any dams, embankments and outlets or other water control devices.
- viii. A location map showing the property. Either a US Geological Survey topographic map or a Tax map may be used to illustrate the property's location in relation to surrounding properties and/or features.

3. Additional application information.

- a. Applications affecting the water retention capacity, water flow or other hydrologic characteristics of any wetland, watercourse or waterbody shall include a statement, prepared by a professional engineer licensed in the State of New York, of the impact of the project on upstream and downstream areas considering drought and rainfall conditions.
- b. Stormwater Management Areas. In some instances stormwater management practices and facilities may negatively impact wetlands and streams. Even the most optimally designed and maintained facilities do not remove all pollutants. Every effort shall be made to ensure that water quality will not be degraded and that

hydroperiod and stream flow are not affected. A pollutant load analysis which compares the pollutant load for both pre- and post-development for individual pollutants shall be completed as part of the Stormwater Pollution Prevention Plan if required. At a minimum, this analysis shall be conducted for each of the following common stormwater runoff contaminants: total suspended solids, total phosphorus, total nitrogen (including nitrates and nitrites), fecal coliforms, and chlorides (road salt). The Planning Board may require the analysis of additional pollutants (identified by the DEC on page 2-3 of the *NYS DEC Stormwater Management Design Manual, 2003*) if the project has the potential to introduce the pollutants to a regulated area. The applicant may use the Simple Method, as described in *Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs*, or a comparable professionally accepted method, but the same method shall be used for all calculations.

- c. Copies of all applicable Town, county, state or federal permits or permit applications which are required for such work or improvement.
- d. The Planning Board, in consultation with the Wetlands Review Professional and the Conservation Advisory Council, may require the following additional information based on the size, scope, or location of the project and as necessary for proper review of the application:
 - i. Description of the vegetative cover of the regulated area
 - ii. Description of potential impacts to wetland hydroperiod or to stream flow.
 - iii. Ground water table elevations indicating depth to groundwater, direction of groundwater flow and hydrologic connections with surface water features.
 - iv. A Habitat Assessment, pursuant to the Town of Milan's Habitat Assessment Guidelines. Copies of the Habitat Assessment Guidelines are available in the Town Clerk's office and from the Planning Board Secretary.
 - v. Assessment of the condition and quality of all potentially affected stream habitats including the following:
 - [a] Physical assessment of stream corridor habitat: Measures of physical habitat quality include water temperature, turbidity, algal growth, riffle size, pool-riffle ratio, substrate size and embeddedness, shelter for fish, flow pattern, channel alteration, streambank

cover and stability, and riparian vegetation. This is described in Chapter 5 of the US Environmental Protection Agency's *Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates, and Fish*.

[b] Water quality: Survey for benthic macroinvertebrates and assessment of chemical parameters shall be conducted for at least two locations on each perennial stream on a project site: one upstream, and one downstream of proposed project construction. The *Hudson Basin River Watch Guidance Document* protocols should be followed, to the Tier 3 level of analysis for benthic macroinvertebrates and Tier 2 for chemical parameters.

vii. Other details as may be determined to be necessary by the Wetlands Review Professional. The Wetlands Review Professional shall notify the applicant within thirty (30) days of receipt of an application if such additional information is necessary.

4. If avoidance of impacts is not possible, then mitigation for impacts on regulated areas is required. The Planning Board, in consultation with the Wetlands Review Professional, shall review the mitigation plan for a regulated area. The plan shall be prepared and approved as part of the wetlands permit application process. It shall include an assessment of specific impacts, regulated area functions to be replaced or restored, criteria for determining mitigation success and a monitoring plan that extends over at least two growing seasons depending on specific site conditions. Mitigation plans are subject to modification based on WRP and Planning Board review and comment until deemed satisfactory
5. Submission waivers. Prior to making a formal submission to the Planning Board, applicants are encouraged to meet with the Wetland Review Professional to review the submission requirements set forth above for their wetlands permit application. Upon recommendation from the Wetland Review Professional, the Planning Board will consider a submission waiver(s) from the requirements set forth below.
 - a. All submission waivers shall be submitted in writing to the Planning Board and shall be expressly set forth in the minutes of the Board.
 - b. In making a determination regarding submission waivers, the Planning Board will take into consideration the nature of the proposed action including but not limited to the size, scale,

extent of regulated area affected and the specific activity requiring the wetlands permit.

§ 191-12 Standards for wetlands permit decisions.

- A. **Considerations.** In approving, denying or approving with modifications any wetlands permit application, the Planning Board shall consider the following:
1. All evidence offered at or before any public hearing.
 2. All reports from federal, state or Town agencies and other municipal boards.
 3. Habitat Assessment as described in the *Town of Milan Habitat Assessment Guidelines*.
 4. Avoidance of impacts to regulated areas by keeping regulated acts outside regulated areas, shall be considered the highest priority. Regulated acts that can be located outside regulated areas shall be so located.
 5. The mitigation plan approved by the Planning Board.
 6. Additional requested information reasonably necessary to make a decision on the wetlands permit.
 7. All relevant facts and circumstances, including but not limited to the following:
 - a. The environmental impacts of the proposed action, specifically including but not limited to: cumulative impacts, watershed impacts, habitat impacts, and impacts on species of conservation concern.
 - b. The alternatives to the proposed action.
 - c. Irreversible and irretrievable commitments of resources involved in the proposed activity.
 - d. The character and degree of injury to or interference with safety, health or the reasonable use of property which is impacted or threatened.
 - e. The compatibility or incompatibility of such activity to the area for which it is proposed. If necessary, the Planning Board may require the applicant to provide an analysis of potential compatibility or incompatibility using the “*Standards for Issuance of Permits and Letters of Permission*” found in 6 NYCRR 663.5.

- f. The effect of the proposed activity with reference to the protection or enhancement of the functions of wetlands and the benefits they provide, which are set forth herein.
 - g. The appropriate use of chemicals and fertilizers according to normally accepted agricultural practices on agricultural lands.
 - h. The possibility of further avoiding adverse impacts to the wetlands' or watercourses' natural capacity to support desirable biological life by application of recommended management guidelines including those for vernal pools.
- 8. The availability of preferable alternative locations on the subject parcel or, in the case of activity of sufficient magnitude, the availability of other reasonable locations.
 - 9. The availability of further technical improvements or safeguards which could feasibly be added to the plan or action.
 - 10. The possibility of further avoiding adverse impacts to wetland functions, including but not limited to: the wetlands' or watercourses' natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation and/or prevent erosion, assimilate wastes, facilitate drainage and provide recreation and open space.
 - 11. Avoidance of adverse impacts to the water quality and temperature of trout streams taking into consideration the existing conditions of the associated buffer area including slope, soils and vegetation.
 - 12. The extent to which the exercise of property rights and the public benefit derived from such use may or may not outweigh or justify the possible degradation of the wetland or watercourse, the interference with the exercise of other property rights and the impairment or endangerment of public health, safety or welfare.
- B. **Findings.** No wetlands permit shall be issued pursuant to this Law unless the Planning Board shall find that:
- 1. The proposed regulated activity is consistent with the intent and purposes of this Law to preserve, protect and conserve wetlands, watercourses and waterbodies and the benefits they provide, to prevent their despoliation and destruction, and to regulate the development of such areas in order to secure their natural benefits consistent with the general welfare and beneficial economic, social and agricultural development of the Town.
 - 2. The proposed regulated activity is consistent with the land use regulations applicable in the Town of Milan.

3. The proposed regulated activity is compatible with the public health, safety and welfare.
4. The proposed regulated activity minimizes degradation to or loss of any part of the wetland, watercourse waterbody or its associated buffer and minimizes any adverse impacts on the functions and benefits which said areas provide.

C. **Burden of Proof.** The applicant shall have the burden of proof of demonstrating that the proposed activity is not adverse to the health, safety or general welfare of the residents of Milan or its neighboring communities, that it will not degrade the environment nor result in any adverse environmental impacts to wetlands and watercourses.

§ 191-13 Judicial review.

- A. Any decision of the Planning Board or any official of the Town of Milan made pursuant to or within the scope of this Law may be reviewed at the instance of any person aggrieved by the action in accordance with Article 78 of the State Civil Practice Law and Rules.

§ 191-14 Compliance, enforcement and penalties.

- A. Residents who are currently conducting activities which become regulated as a result of this Law shall have two years from the date of adoption of this Law to bring those activities into compliance.
- B. Whenever the Wetlands Review Professional has reasonable grounds to believe that the applicant or property owner has not complied with any or all of the terms of this Law, has failed to undertake a project in the manner set forth in a wetlands permit, has violated any condition attached by the approval authority in a wetlands permit issued pursuant to this Law or has exceeded the authority granted in a wetlands permit issued pursuant to this Law, the Wetlands Review Professional shall promptly refer the matter to the Building, who shall notify the landowner or responsible person and issue a written Notice to Remedy and post a Stop Work Order. All work shall be suspended and shall not resume again until such a time that the Stop Work Order has been rescinded by the Code Enforcement Officer. Such notice and order shall be in writing, shall state the conditions under which work may be resumed and may be served upon the landowner or person to whom it is directed by delivering it personally to him or her, or by posting the same in a conspicuous location on the project site and by sending a copy of the same to the person or persons responsible by certified mail. The Code Enforcement Officer shall file a copy of such notice and order with the Planning Board, the Wetlands Review Professional, the Conservation Advisory Council, the Town Board and the Town Clerk.

- C. The Code Enforcement Officer is hereby authorized to enforce the provisions of this Law, including conditions of wetlands permit approval and, pursuant to Criminal Procedure Law §150.10, to issue appearance tickets requiring appearance in the in the Town of Milan Justice Court. A copy of the appearance ticket shall be filed with the Planning Board.
- D. The Town of Milan is specifically empowered to seek injunctive relief in a court of competent jurisdiction to restrain any violation or threatened violation of this Law or any condition attached by the approval authority to a wetlands permit and/or to compel the restoration of the affected regulated area, within a reasonable time and under the supervision of the Wetland Review Professional, to its condition prior to violation of the provisions of this Law or any condition attached by the approval authority in a wetlands permit issued pursuant to this Law. If the Town is successful in obtaining preliminary and/or permanent injunctive relief, it shall be entitled to an award by the court of its reasonable attorneys' fees.
- E. A violation of any provision of this Law or any condition attached by the approval authority in a wetlands permit issued pursuant to this Law shall constitute an offense. Any person, corporation or any other legal or commercial entity convicted of having violated any provision of this Law, or any condition attached by the approval authority in a wetlands permit issued pursuant to this Law shall, for the first offense, be punished by a fine of not less than one hundred dollars (\$100) but not more than five hundred dollars (\$500). For each subsequent offense, such person, corporation or entity shall be punished by a fine of not less than five hundred dollars (\$500), but not more than five thousand dollars (\$5000). Each consecutive day of violation shall constitute a separate and distinct offense.
- F. The foregoing provisions for enforcement of the regulations in this Law are not exclusive, but are in addition to any and all remedies available to the Town at law or in equity.

§ 191-15 Conflict with other regulations.

- A. Where the standards and management requirements of this Law are in conflict with other land use development regulations, and policies regarding streams, steep slopes, clearing and grading, erodible soils, wetlands, floodplains, timber harvesting, land disturbance activities, or other environmental protective measures, the more restrictive standards and requirements shall apply.

§ 191-16 Severability.

- A. The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Law shall not affect the validity of any other part of this Law, which can be given effect within such part or parts.

SECTION 2. EFFECTIVE DATE

This Law shall take effect immediately after it is filed with the Secretary of State as provided in section twenty-seven of the Municipal Home Rule Law.